



OFFICE OF STATEWIDE BROADBAND

Contracting and Funds Request Procedures Guide

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GENERAL

This guide implements and explains the provisions of the Grant Agreement containing the requirements and procedures to be followed by an Awardee performing work to be financed with DHCD grant funds. The Awardee shall maintain accounting and plant records sufficient to document the cost and location of all construction and to support expenses and disbursements. The Grant Agreement also contains provisions regarding disbursement of broadband funds. This document also implements certain provisions by setting forth requirements and procedures to be followed by the Awardees in obtaining funds.

ABBREVIATIONS

For purpose of this guide:

DHCD stands for the Maryland Department of Housing and Community Development.

OSB stands for the Office of Statewide Broadband.

Program stands for the Network Infrastructure Grant Program.

DEFINITIONS

For purposes of this guide:

Application means the Broadband Infrastructure Grant Program application submitted by the Awardee and approved by DHCD.

Award means any broadband award made by DHCD.

Award documents mean the grant agreement, exhibits, and application guide and application covering an award made on behalf of OSB by DHCD.

Award funds means funds provided on behalf of OSB by DHCD through an award.

Awardee means any organization that has received funding on behalf of OSB from DHCD.

Broadband Service means the minimum transmission rate as defined in the program application guide under which the award was made.

Closeout documents mean the documents required to certify satisfactory completion of all obligations under the Grant Agreement.

Contract means the agreement between the Awardee and an independent contractor covering the purchase and/or installation of equipment or the construction of facilities to deliver broadband services for an Awardee's system.

Contract work means any work performed pursuant to a contract.

Deposit account means an account into which all DHCD reimbursement funds are deposited.

DHCD means the Department of Housing and Community Development; an agency of the State of Maryland.

Engineer means a person registered as an engineer in Maryland, or a person on the Awardee's staff authorized by OSB to perform engineering services.

OSB means the Governor's Office of Rural Broadband, a part of the Governor's Office housed at DHCD.

In-house engineering means any engineering services performed by the Awardee's staff.

In-house work means any work performed by the Awardee's employees, pursuant to its work order procedure, with the Awardee furnishing all materials, equipment, tools, and transportation.

Interim work means any work that commences after an application has been submitted to DHCD and OSB but prior to release of award funds.

Outside plant means the part of the network that is physically located outside of the network operations buildings. This includes cable, conduits, poles and other supporting structures and certain other associated equipment items.

Plans and specifications means a copy of the appropriate contract, the specifications, and such additional information and documents needed to provide a clear, accurate, and complete understanding of the work to be performed. If utilizing in-house work, it means the plans and specifications utilized by the in-house crews to complete the work.

Reimbursement means transferring funds from DHCD to the Awardee's deposit account.

Subcontract means a secondary contract undertaking some of the obligations of a primary contract.

System design means the system described in the approved Application.

Work means any purchase of equipment, software and/or installation, if applicable; construction of facilities; or professional services.

CONTRACTING PROCEDURES

I. GENERAL

All work must conform to the Application, as approved by OSB and/or DHCD. No construction and/or installation activities shall commence until all necessary local, state and federal requirements have been satisfied.

All work performed prior to the submission of an application to OSB will not be eligible for funding. In addition, only new materials and equipment may be financed with award funds, unless otherwise approved in writing by OSB.

A. Interim Work

Once OSB has received an application, the applicant may proceed with interim work. However, this should not be construed as a commitment that OSB will approve the application. To ensure that interim work is eligible for reimbursement with award funds, the Awardee must comply with all the procedures in this Guide, including the following requirements:

1. Titles VI and VII of the Civil Rights Act of 1964, as amended;
2. Title 20 of the State Government Article, Annotated Code of Maryland, as amended;
3. The Department's Minority Business Enterprise Program, as amended;
4. The Governor's Executive Order 01.01.1989.18 relating to Drug and Alcohol Free Workplaces, and any Department or State regulations adopted or to be adopted to carry out the requirements of that Order; and
5. The Americans with Disabilities Act of 1990, as amended.

B. Contracts

The Awardee must use a contract to perform all work other than in-house work. A copy of all approved contracts shall be provided to OSB within 10 days of its final execution. Work performed under contract will not be reimbursed if, in DHCD's or OSB's judgment:

1. The contract is for work not covered in the approved Application, or is not for an Eligible Purpose;
2. The contract terms and conditions, are vague, inadequate, or unreasonable; or
3. The contract presents an unacceptable security risk to DHCD or OSB.

C. Contract Amendments

The Awardee shall obtain OSB approval before execution of any amendment to an approved contract if:

1. The amendment alters the terms and conditions of the contract or changes the scope of the project covered by the contract regardless of the amount of the contract before amendment; or
2. The amendment by itself (or together with preceding amendments) increases the original contract price by 20% or more.

Once OSB's approval to amend the contract has been granted, or for any other contract amendments not requiring approval, the Awardee must submit an original executed amendment to OSB.

D. Insurance

Insurance coverage shall be provided by a company that is registered with the Maryland Insurance Agency and authorized to transact business in the State.

1. The contractor shall provide contractor's insurance coverage for comprehensive public liability, property damage liability/builder's risk, and workers' compensation in the form and amounts required by the Awardee.

E. Affiliated Transactions

With regard to the Project, the Awardee shall not enter into any transaction, contract, or dealing with an Affiliate of the Awardee or with the Awardee's or Affiliate's directors, trustees, officers, managers, members (if the Awardee is a limited liability company), or other corporate officials, without the prior written consent of OSB. OSB's consent to reimburse costs for affiliated transactions will be limited to an amount which is the lower of cost or market rate and which is subject to verification by OSB and its representatives having access to the books and records of the Affiliate.

"Affiliate" or "Affiliated Company" of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services.

F. Records

Records must be sufficient to document the cost and location of all expenditures and to support expenses and disbursement of award funds. The support records must include, but not be limited to, contracts, third party invoices, timesheets, payroll records, material records, and overhead allocation records and summary schedules.

The Records shall be in a form acceptable to the Department. Awardee shall retain the Records for five (5) years following the date the Department approves the Project's Final Report.

II. PROFESSIONAL SERVICES

General

Awardee shall only obtain professional services from persons or firms not affiliated with, or that do not represent a contractor, vendor or manufacturer presently providing labor, materials, or equipment to the Awardee. This does not include in-house services.

A. Engineering Services

All engineering services required by an Awardee, including inspection and certification, shall be rendered by an engineer selected by the Awardee and licensed in the State of Maryland, or by qualified employees on the Awardee's staff, who after submission of qualifications to OSB, have been approved to perform such services.

1. Outside Consultant. Engineering services performed by an outside consultant must be performed under contract. A copy of all approved contracts shall be provided to OSB within 10 days of its final execution. Work performed under contract will not be reimbursed if, in DHCD's or OSB's judgment:
 - a) The contract is for work not covered in the approved Application, or is not for an Eligible Purpose;
 - b) The contract terms and conditions, are vague, inadequate, or unreasonable; or
 - c) The contract presents unacceptable security risk to DHCD or OSB.
2. In-House Engineering. When the proposed work is such that the engineering involved is within the capabilities of the employees on the Awardee's staff, Awardees may request OSB approval to provide such services. The request shall include:
 - a) A description of services to be performed;
 - b) The names and qualifications of each employee that will be performing the specific services. In addition, the Awardee shall identify an employee who will be in charge of the services. Such employee must meet the State experience requirements for a registered engineer in the Maryland. In the absence of specific State experience requirements, this employee should have at least eight years' experience in the design and construction of telecommunication facilities, with at least two years of the work experience being at a supervisory level. OSB does not require professional registration of this employee, but this does not

relieve the Awardee from compliance with applicable state registration requirements, which may require a licensed individual to perform such services;

- c) A letter signed by an authorized representative of the Awardee requesting in-house engineering approval and certifying the supporting information; and
- d) The reimbursement rate for the in-house engineer must be approved prior to work being performed. Information documenting the salary and other direct labor costs must be submitted to OSB for approval. Future changes to the rate during the project must be resubmitted and approved prior to the change being implemented.

OSB shall notify the Awardee by letter of approval or disapproval to perform in-house engineering. The letter shall set forth any conditions associated with an approval or the reasons for disapproval. OSB approval of in-house engineering services shall be only for the specific services covered by the approval.

B. Contract and Closeout Documents

Once all services and obligations required under the professional services contract have been completed, Awardees shall submit a *Final Statement of Professional Service Fees* to close out the contract. The statement shall provide a summary of work completed by category as defined in the original contract with a total cost of each category.

III. PURCHASE AND INSTALLATION OF EQUIPMENT

General

- A. Equipment can be purchased with a contract or via purchase order. If purchased by contract, a copy of the approved contract shall be provided to OSB within 10 days of its final execution. Equipment procured under contract will not be reimbursed if, in DHCD's or OSB's judgment:
 - 1. The contract is for equipment not covered in the approved Application, or is not for an Eligible Purpose;
 - 2. The contract terms and conditions, are vague, inadequate, or unreasonable; or
 - 3. The contract presents unacceptable security risk to DHCD or OSB.
- B. Unless previously requested by the Awardee in writing and approved by OSB in writing, equipment will be reimbursed after installation upon submission of the invoices and following any required field verification performed as part of the Request for Funds procedure.

IV. CONSTRUCTION OF FACILITIES

General

Construction for outside plant facilities may be performed using in-house forces or by an outside contractor.

A. Outside Contractor

Contract work must be performed under contract by a contractor selected by the Awardee and meeting all licensing requirements in the State of Maryland.

The engineer shall prepare a bid package comprised of construction plans and specifications with the respective contract for distribution to prospective contractors. OSB recommends that Awardees obtain quotes from several contractors before entering into a contract to ensure obtaining the lowest cost. The Awardee shall ensure that the contractor selected meets all federal, state, and local licensing requirements, as well as any bonding requirements, and that the contractor maintains the insurance coverage required by the contract for the duration of the work.

Once construction has been completed per the construction specifications and all contractually required acceptance tests have been made, the Awardee shall proceed with the closeout of the contract and submit a final contract closeout certification.

All projects require testing of the installed plant, both wired and wireless in accordance with industry standards for the approved technology.

1. Reimbursement. To request funds for construction completed under contract, the Awardee shall submit a reimbursement request using the Infrastructure Grant Funds Request. A request for payment shall identify in detail all expenses incurred for which reimbursement is being sought, and shall have attached copies of the supporting invoices and other documentation of such expenses.

B. Work Order Procedures for In-House Construction

Work order construction shall be performed to all local, state, and federal requirements. As work order construction is performed, the Awardee shall keep daily timesheets and material reports, referenced by the work project number, to record labor and materials used. Cost accounting system must be in place to show the source and summary records to support requested and expended funds.

Payment will not be made for outside plant fiber placement until end-to-end attenuation, end-to-end signature and splice testing is completed. Test results shall be submitted with the request for payment. A minimum of one fiber from each buffer tube must be tested with a minimum of 12 tests per cable. For ribbon cable, a minimum 12 tests per cable or 20% of the fiber strand, whichever is greater, will be tested. Testing results are to be submitted with the requested reimbursement.

1. Reimbursement. To request funds for construction completed under the work order construction procedures, the Awardee shall submit a reimbursement request using the

Infrastructure Grant Funds Request. Each work order requesting funding will be submitted with a description of each project as an attachment to the Infrastructure Grant Funds Request form. Unless otherwise approved by OSB, the Awardee shall finance all work order contract construction with non-grant funds and obtain reimbursement with grant funds when construction and testing is completed and properly executed closeout documents have been submitted to OSB; and

2. The reimbursement rate for the in-house labor must be approved prior to work being performed. Information documenting the salary and other direct labor costs must be submitted to OSB for approval. Future changes to the rate during the project must be resubmitted and approved prior to the change being implemented.

V. DISBURSEMENT OF FUNDS

General

The award document contains the provisions regarding disbursement of funds to the Awardee. This section implements certain provisions by setting forth requirements and procedures to be followed by the Awardee in obtaining a disbursement of funds.

OSB is under no obligation to approve disbursement of funds unless the Awardee complies with all terms and conditions of the grant agreement.

A. Broadband Budget

The Awardee provided a broadband budget with their approved Application. This budget divides the award into budget categories that are associated with the proposed projects, such as equipment, outside plant, land and buildings, professional services, etc. Funds from one budget category may not be used for a different budget category without prior written approval from OSB.

B. Budget Adjustments

If more funds are required than are available in a budget category, the Awardee may request OSB's approval of a budget adjustment to use funds from another budget category. The request shall include an explanation as to why the adjustment is needed and the affected budget categories. OSB will not approve a budget adjustment unless the Awardee can demonstrate that all purposes can still be completed with the requested adjustment.

C. Broadband Infrastructure Grant Funds Request

To request funds for work completed, the Awardee must submit the Broadband Infrastructure Grant Funds request form, a description of the funding desired, and other related information to the transactions as required by OSB. Funds may be requested for paid or unpaid invoices for work completed.

The Awardee shall request reimbursement as needed to meet its obligations promptly. Funds must be used for the item for which they were provided except that funds may be used to reimburse the Awardee if they have previously paid the invoice for which funds are requested.

The certification on the Request sent to OSB shall be signed by a corporate officer or manager authorized to sign such statements. If the signer is not a corporate officer, a letter signed by a corporate officer authorizing the signatory must be provided with or prior to submitting the Request.

Funds are approved for disbursement as follows:

Contracts

1. Unless the contract includes a provision for retainage, 100% of the invoice's amount will be funded. If there is a retainage provision within the contract, the funding will be reduced to the amount due. The amounts held due to the retainage will be funded upon presentation of the contract closeout documents with a proper invoice from the contractor requesting the retainage.

Work Orders

1. 100% of the amount requested and supported by proper documentation of the expense will be paid.

D. Method of Disbursing Funds

The first or subsequent disbursement may be conditioned on the satisfaction of certain requirements stated in the Awardee's agreement with DHCD.

All disbursements shall be made electronically using the Automatic Clearing House (ACH). Normally, for disbursement of funds ACH only makes one payment per request.

The following information shall be included with each request:

1. Name and address of Awardee's bank. If the Awardee's bank is not a member of the Federal Reserve System, the name and address of its correspondent bank that is a member of the Federal Reserve System;
2. ACH routing information;
3. Awardee's bank account title and number; and
4. Any other necessary identifying information.